IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8747 OF 2004

Rajendra Shivaji Sharma & ors. Petitioners
vs.
Nashik Municipal Corporation & ors. Respondents

Mr.R.D.Soni i/b.M/s.Ram & Co. for the petitioners.

Mr.R.V.More for the respondents 1 and 2.

Mr.S.R.Nargolkar,A.G.P. for the respondent no.3.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 31st March 2005

P.C.

Heard.

2. Rule. Returnable forthwith. Mr.R.V.More, advocate waives service for respondent nos. 1 and 2. Mr.S.R.Nargolkar, A.G.P. waives service for respondent no.3.

3. Rule is finally disposed of at this stage.

4. The petitioners have prayed for the following relief:

(a) That this Hon'ble Court be pleased to issue a writ of Mandamus, or any other writ, order or direction in the nature of writ of Mandamus, directing the Respondents Nos. 1 and 2 to treat the

proposal submitted by the petitioners on 7th July 2004, acknowledgement of which is annexed as Exh.E hereto, as deemed to have been sanctioned under the provisions of section 45(5) of the MRTP Act and further direct the Respondents Nos. 1 and 2 to issue a tentative lay out to the petitioners based on the aforesaid deemed sanction with permission to the petitioners to develop the said property in accordance with the deemed sanction.

6. The petitioners applied for development permission in survey no.201/3 situated at Nashik shiwar on 15th October 2003. The application for development permission was rejected by the respondent no.1 vide communication dated 11th November 2003. The communication dated 11th November 2003 reads thus:

"Nashik Municipal Corporation
67 No.TPD/WS/Pan/152
Office of the Nashik Municipal Corpn.
Nashik.

Date: 11/11/2003

To,
Shri Santosh H. Sharma & others
Through GPA Ho.Shri C.B.Shah
C/o.Shri C.G.Mayur,Archt.Nashik.

Sub:Development permission in S.No.201/3
of Nashik Shiwar.

Ref:Your application for Development
permission dated 15.10.2003.

. . On scrutiny of the case paper it is found that the documents shown as have not been submitted along with the application.

1) 7/12 Extract (pacca) or property register card showing the ownership tenure & other rights.

2) Affidavit & Indemnity Bond in prescribed form (duly solemnised) as per ULC Act, 1976.

3) Copy of approved layout plan/demarcation plan, Bldg.Plan, Completion Certificate.

4) Proof of Road Construction on site with certificates of appropriate authority.

5) Consent from all owners as per 7/12 Extract/Property Register Card/Sale Deed.

6) The area and boundaries of the plot under reference do not tally with the approved layout as well as with the area shown on 7/12 Extract Property Register Card.

7) Marginal distances are not shown properly.

8) The built up area F.A.R. exceeds the permissible limit.

9) You have not paid Rs.- as additional contribution as per T.P.Scheme regulations.

10) The site is affected by Rev.Site No.285 (Primary School) No.284 (Play Ground), No.283 (High School).

11) Scrutiny fee receipt/Development charges Receipt/ Scheme Betterment charges Receipt / Additional Contribution charges Receipt/ Tax Clearance of existing building.

12) The Land under layout is affected by sanctioned Dev.Plan (D.P.) Reservation vide Reservation Site No.285 (Primary School), No.283 (High School), No.284 (Play Ground).

13) Acquisition process of Reservation u/R is going on and process will be completed after approval of Hon.Standing Committee, NMC, Nashik.

. The permission applied for is hereby refused for the reasons stated above hence all the case papers except one set of unapproved plan are returned herewith.

Sd/- xxx

Executive Engineer of Town
Planning,Nashik Municipal
Corporation, Nashik."

7. Aggrieved by the communication dated 11th November 2003 of the Nashik Municipal Corporation refusing the development permission, the petitioners preferred appeal under section 47 of the Maharashtra Regional & Town Planning Act, 1966. The appeal was allowed vide decision dated 1st July 2004 and the order of Nashik Municipal Corporation dated 11th November 2003 was set aside. The appellate authority observed in its order that regarding approval of lay out, the Nashik Municipal Corporation should do the necessary scrutiny as per the Development Control Rules and take further action.

8. Thereafter again the petitioners applied for development permission in respect of survey no.201/3 situated at Nashik Shiwar. According to the respondent nos.1 and 2, the said application was rejected and communication sent to the petitioners on 15th September 2004. The communication dated 15th September 2004 said to have been sent by the respondents 1 and 2 to the petitioners reads thus:

Nashik Municipal Corporation

No.TPD/WS/Panchvati/88,
Office of the Nashik
Municipal Corpn,Nashik.

Date 15/09/2004.

To,
Shri S.D.Sharma & ors.
G.P.A. Shri C.B.Shah,
c/o.G.T.Mayur.

Sub:Development permission in S.No.201/3 Plot No.- of Nashik shiwar.

Ref.-Your application for Development permission Dated / / .

. On scrutiny of the case paper it is found that the documents shown as have not been submitted along with the application.

1) 7/12 Extract (pacca) or property register card showing the ownership tenure & other rights.

2) Affidavit & Indemnity Bond in prescribed form (duly solemnised) as per ULC Act, 1976.

3) Copy of approved layout plant/ demarcation plan, Bldg. Plan, Completion Certificate.

4) Proof of Road construction on site with certificates of appropriate authority.

5) Consent from all owners as per 7/12 extract / property register card/ sale deed.

6) The area and boundaries of the plot under reference do not tally with the approved layout as well as with the area shown on 7/12 Extract property register card.

7) Marginal distances are not shown properly.

8) The built up area F.A.R. exceeds the permissible limit.

9) You have not paid Rs._____ as additional contribution as per T.P.Scheme regulations.

10) The site is affected by _____

11) Scrutiny fee receipt/ Development charges

receipt/ Scheme betterment charges
receipt/ Additional contribution charges
receipt/ Tax clearance of existing building.

12) Site visit.

13) U.L.C. Map.

14) D.Z.L.R.Map.

. The permission applied for is hereby refused for the reasons stated above hence all the case papers except one set of unapproved plan are returned herewith.

Sd/-
For Executive Engineer of Town Planning Nashik Municipal Corporation, Nashik. "

9. We do not intend to go into the question whether the aforesaid communication is antedated or not. Suffice it to observe that if the application made by the petitioners for development permission was found deficient, an opportunity ought to have been given to the petitioners to make up those deficiencies. We find it strange on the part of the Nashik Municipal Corporation to reject the application made by the petitioners for development permission straightaway without affording an opportunity to the petitioners to make up the deficiencies. Be that as it may, we are of the view that the petitioners must be granted an opportunity to produce the documents now marked at items 1, 5, 6, 13 and 14 of the communication dated 15th September 2004. There cannot be any document like site

visit reference of which has been made at serial no.12 in the communication dated 15th September 2004. If the officer/official of Nashik Municipal Corporation intends to visit site, they may do so and obviously in that regard the petitioners would cooperate with the Nashik Municipal Corporation.

10. We, accordingly, dispose of the writ petition by the following order:

(i) The petitioners are permitted to produce the documents referred to at item Nos.1, 5, 6, 13 and 14 in the office of the Nashik Municipal Corporation, Nashik within two weeks from today.

(ii) The official/officers of Nashik Municipal Corporation may also have site visit, if necessary. The petitioner shall cooperate with the Nashik Municipal Corporation in that regard.

(iii) The respondents 1 and 2 are directed to take decision on the application made by the petitioners for development

permission on survey no.201/3 situated at Nashik Shiwar within four weeks from the date of receipt of the additional documents from the petitioners.

No costs.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)